

REMARKS

Claims 1 and 19-29 are currently pending in this application. Claim 1 is currently amended herein. Claims 21-27 and 29 stand withdrawn. Claims 2-18 were previously cancelled without prejudice or disclaimer as to the subject matter thereof.

Objections

- The Office Action objected to claim 20 as being dependent upon a rejected base claim. Applicant submits that claim 1 is allowable for the reasons set forth below, and therefore requests reconsideration and withdrawal of the current objection to claim 20.
- Applicant notes that the Examiner has withdrawn the prior objections to the title and claims 1, 8-12, 19, 20 and 28. Applicant appreciates the Examiner's reconsideration and withdrawal of the prior objections.

Rejections

35 U.S.C. § 112, 1st paragraph

Applicant appreciates the Examiner's reconsideration and withdrawal of the prior rejection of claims 1-5, 7, 9-12, 19 and 28 under 35 U.S.C. § 112, 1st paragraph.

35 U.S.C. § 102(e)

Applicant appreciates the Examiner's reconsideration and withdrawal of the prior rejection of claims 1-3 and 9-12 under 35 U.S.C. § 102(e).

35 U.S.C. § 102(a)

Applicant appreciates the Examiner's reconsideration and withdrawal of the prior rejection of claims 1-3 and 9-12 under 35 U.S.C. § 102(a).

Provisional Double Patenting Rejection

The Office Action provisionally rejected claims 1, 19 and 28 under a Nonstatutory Obviousness-type Double Patenting (ODP) rejection over claims 12-13 of co-pending Application No. 10/568,104.

As explained in greater detail below, Applicant has amended the priority claims of the instant application to waive the priority claim to French Patent Application No. FR 03/09962, filed August 14, 2003. Applicant has amended the "Cross-Reference to Related Applications" paragraph of the specification in this response, and also accompany said amendment with an ADS reflecting the current priority claims. Applicant will provide a Declaration of the Inventor as soon as it is executed by the Inventor.

Applicant also notes that the priority claim of co-pending Application No. 10/568,104 will be amended to remove the claim to benefit of priority to European Patent Application No. 03292030.8, filed August 14, 2003. Nonetheless, Applicant submits that the instant application and co-pending Application No. 10/568,104 were filed on the same day, namely February 13, 2006, and furthermore claim benefit of priority to applications that were filed on the same day, namely August 14, 2003. Therefore, Applicant submits that a determination must be made by the Examiner of which of the two applications claims a base invention. For the convenience of the Examiner, Applicant cites the relevant excerpt from M.P.E.P. 804 "Nonstatutory Double Patenting Rejection", which states as follows:

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue. If both

applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

See M.P.E.P., § 804 (I)(B)(1) (8th Ed., 6th Rev.).

Additional Comments

Common Ownership/103

The Office Action states that “[c]ommonly assigned Application No. 10/568,104 (US PG Pub 2007/0259813 A1), discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 C.F.R. 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.” *See* Office Action, paragraph 16.

As stated in the M.P.E.P., “[i]n order to be disqualified as prior art under 35 U.S.C. § 103(c), the subject matter which would otherwise be prior art to the claimed invention and the claimed invention must be commonly owned, or subject to an obligation of assignment to a same person, at the time the claimed invention was made or be subject to a joint research agreement at the time the invention was made.” *See* M.P.E.P. § 706.02(1)(2).

Furthermore, the M.P.E.P. states that “[t]he following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s): Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application

and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.” *Id.*

Applicant provides herewith as the Appendix a “Statement of Common Ownership.” Applicant submits that this showing should be sufficient to enable the Examiner to resolve this issue. Applicant will provide further evidence to support the Statement of Common Ownership on request by the Examiner.

Priority/Inventorship

The Office Action states that “[i]t should be noted that both Applications (10/568,108 and 10/568,104) claim priority to EPO 03292030.8 and FRANCE 0309962, yet have different inventors.” *See* Office Action, paragraph 18.

As noted above, Applicant has amended the priority claims of the instant application to waive the priority claim to French Patent Application No. FR 03/09962, filed August 14, 2003. Applicant has amended the “Cross-Reference to Related Applications” paragraph of the specification in this response, and also accompany said amendment with an ADS reflecting the current priority claims. Applicant will provide a Declaration of the Inventor as soon as it is executed by the Inventor.

Applicant also notes that the priority claim of co-pending Application No. 10/568,104 will be amended to remove the claim to benefit of priority to European Patent Application No. 03292030.8, filed August 14, 2003.

Applicant respectfully submits that the amendment to the priority claim of the instant application and the proposed amendment to the priority claim of the co-pending Application No 10/568,104 will rectify the apparent inventorship discrepancy. Applicant would appreciate acknowledgement to that effect from the Examiner.

CONCLUSION

An indication of allowance of all claims is respectfully solicited. Early notification of a favorable consideration is respectfully requested.

Respectfully submitted,

HUNTON & WILLIAMS LLP

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By: 

Robert C. Lampe, III
Reg. No. 51,914

Hunton & Williams LLP
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
(202) 955-1500 (Telephone)
(202) 778-2201 (Facsimile)